REMARKS

Claims 1-13 and 35-50 are now pending in the application. Claims 1-3, 5, 35-37, 39-45, 48, and 50 are amended by this amendment. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

APPLICANTS' INITIATED INTERVIEW

Applicants thank the Examiner for the interview granted with Applicants' representative on March 6, 2007. During the interview the independent claims and the outstanding rejections, including the art cited therein, were discussed. During the interview no agreement was reached regarding allowability of the claims.

Applicants' representative, however, did argue that the cited art did not teach various features as presently claimed, including: a constraining ring and a cylindrical equator, a complete cylindrical equator, and a cylindrical equator aligned or co-axial with a junction or junction taper (e.g. female taper 26).

Applicants' representative requested and the Examiner agreed to contact Applicants' representative regarding the status of the claims once the Examiner reviewed and fully considered Applicants arguments and amendments included herein.

SPECIFICATION

The specification stands objected to as failing to provide proper antecedent basis for the claimed subject matter. This objection is traversed.

The term "bore" has been deleted from Claims 35 and 39. Therefore, this rejection is rendered moot and Applicants request that the Examiner withdraw the objection to the specification.

REJECTION UNDER 35 U.S.C. § 102 AND 103

Claims 35-44 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Germany (DE 9312150) (herein German reference). Claims 1-13 and 35-50 stand rejected under 35 U.S.C. § 102(b) as being anticipated over Noiles (4,978,356) in view of the German reference. These rejections are respectfully traversed.

Applicants respectfully request the Examiner reconsider Applicants' previous arguments regarding the German reference and Noiles.

As previously presented, the German reference is directed to a first member that is operable to be positioned within a depression 5 of a second member. The ball member (not numbered) includes a tapered collar 16. As illustrated in Fig. 1 of the German reference, the tapered collar 16 is not coaxial with a ground surface 18 of the ball member. Moreover, and in part because the tapered collar and ground surface are not coaxial, the ground surface 18 does not define a cylindrical equator of the ball member. In addition, the area 13, defined within the ball member, is also not substantially coaxial with the ground surface 18 of the ball member.

Contrary to the German reference, independent Claim 35 recites "a second prosthesis member defining a junction portion centered on and formed around a first axis [and] at least one cylindrical portion having a central axis the same as the first axis" and independent Claim 39 recites "a femoral head prosthesis member defining a

tapered junction centered on and formed around a first axis, wherein said femoral head prosthesis member has a first diameter substantially equal to said internal concave diameter and has a cylindrical equator that defines a complete equator of said femoral head prosthesis member having a second diameter about the first axis less than said first diameter". Applicants submit that the amendments to independent Claims 35 and 39 do not change the scope of the claims as "about" and "around" are substantially interchangeable. See Attachment A; American Heritage College Dictionary, 3d Ed., Houghton Mifflin Company, 1993, page 4. Further, Applicants submit that "centered on and formed around a first axis" is supported by the application as filed, and is clearly not taught or suggested by the German reference.

As discussed above and illustrated in Fig. 1 of the German reference, the device of the German reference clearly does not include a junction and its structural position as recited in independent Claims 35 and 39. Independent Claim 39 also recites, "a cylindrical equator that defines a complete equator", which is not disclosed in the German reference. As discussed with the Examiner during the interview, the German reference illustrates that the ground surface 18 must intersect or cooperate with the tapered collar 16 and, as such, is not a cylindrical equator. Therefore, Applicants submit that independent Claims 35 and 39, and each of the claims that depend directly or indirectly therefrom, are in condition for allowance.

Applicants further submit that there is no teaching or suggestion in the German reference and Noiles to combine the German reference and Noiles. As previously argued, the German reference (according to the machine translation previously submitted by Applicants) describes that a locking ring to prevent luxation is undesirable

and not needed when the device of the German reference is used. The German reference therefore disparages a locking ring to prevent luxation.

Even assuming that the German reference is discussing a flange, similar to a flange 5 as illustrated in U.S. Pat. No. 6,093,208 to Tian, Applicants respectfully submit that the metal reinforcing band of Noiles performs a similar resistance to luxation as the flange 5 of Tian. Thus, the flange 5 of Tian and the reinforcing band 120 of Noiles appear, Applicants respectfully submit, to be identical with respect to the German reference. Noiles describes that a metal reinforcing band 120 can produce a constrained joint that is "able to withstand higher dislocation forces" than devices without such a band. See Noiles column 14, lines 21-24. Tian also describes that a flange can be coupled to retain the artificial head. See Tian column 2, lines 32-35. In light of this, Applicants submit that the flange 5 of Tian and the reinforcing band 120 of Noiles both provide restriction against luxation. In light of this, Applicants respectfully submit that both are within the scope of the types of devices disparaged by the German reference. Therefore, Applicants respectfully submit that the German reference teaches away from the combination of the German reference with either of Noiles or Tian.

Contrary to the cited art, independent Claim 1 recites "said ball portion includes a cylindrical equator extending around a compete circumference of said ball portion and having an equator diameter similar to said passage width and smaller than said ball diameter". Applicants respectfully submit that the German reference, either alone or in combination, does not teach or fairly suggest cylindrical equator as claimed. The complete cylindrical equator extends around the ball portion without the interruption of another portion. Thus, the cylindrical equator alone defines the equator diameter.

Further, independent Claim 1 recites "a constraining ring cooperating with said opening". As discussed above, the cited art does not teach or fairly suggest each of the elements of independent Claim 1, and Applicants submit that the art teaches away from a combination of a cylindrical equator and a constraining ring.

Applicants submit that claims that depend directly or indirectly from independent Claim 1 also include a patentable subject matter. For example, dependent Claim 2 recites "a cup having an interior surface and an exterior surface and a fixation member extending from exterior surface adapted to be implanted into a first boney structure". Applicants respectfully submit that the cited art, either alone or in combination, does not teach or fairly suggest a fixation member extending from an exterior surface. In addition, dependent Claim 3 recites "wherein said cylindrical equator of said ball portion defines a cylinder diameter to allow said ball portion to be inserted into said internal concave portion through the opening when a central axis of said cylindrical equator is aligned with the opening." Again, Applicants submit that the cited art, including the German reference, do not teach or fairly suggest the configuration recited in dependent Claim 3. As discussed above, the device of the German reference appears to require a chamfered collar 16 separate from a portion 18, which is contrary to independent Claim 1.

Independent Claims 35 and 39, Applicants submit, are neither taught nor fairly suggested by the German reference, as discussed above. In addition, Applicants submit that Noiles does not teach or fairly suggest, either alone or in combination with the other cited art, each of the elements in independent Claims 35 and 39.

Independent Claim 45 recites "a constraining ring cooperating with said opening to reinforce and maintain the passage dimension; a ball portion sized to fit and replace a portion of a femoral head having a ball diameter substantially equal to said internal concave diameter; and wherein said ball portion includes a cylindrical equator having a diameter similar to said passage dimension". As discussed above, Applicants submit that the cited art, either alone or in combination, does not teach or fairly suggest the constraining ring and a ball portion that includes an equator having a diameter similar to the passage dimension of the liner. Applicants submit that the cited art also teaches away from a system that includes a constraining ring and the cylindrical equator. Applicants respectfully submit that such a combination appears to be based on improper hindsight reasoning. Not only does the cited art teach away from such a combination, only Applicants present application suggest such a device.

Independent Claim 48 recites "a bearing member ... a constraining ring member interconnected with the bearing member near an entrance to the internal concave portion to maintain an entrance dimension; and a second member sized to fit and replace a portion of a femoral head having a first diameter substantially equal to said internal concave diameter and defining a cylindrical equator defined around a first axis and extending completely around said second member; wherein the cylindrical equator has a second diameter less than said first diameter; wherein said second member defines a junction formed around the first axis". As discussed above, the cited art alone or in combination, do not teach or fairly suggest providing a constraining ring, a cylindrical equator formed around a first axis, and a junction formed a round the first axis as recited in independent Claim 48. As discussed above, none of the cited art teaches

each of these recitations in combination. Further, as also discussed above, Applicants submit that the cited art teaches away from a combination of these recitations.

Therefore, Applicants respectfully submit that each of the presently pending claims is in condition for allowance.

If each of the presently pending claims are not indicated as allowable and a rejection is maintained on the German reference, Applicants respectfully request a certified translation of the German reference from the U.S. Patent and Trademark Office prior to any further office actions. Applicants also respectfully request, if a further office action includes a rejection based on the German reference, an identification in the translation of each of the rejected claim elements.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: March 8, 2007

By:

Richard W. Warner Reg. No. 38,043

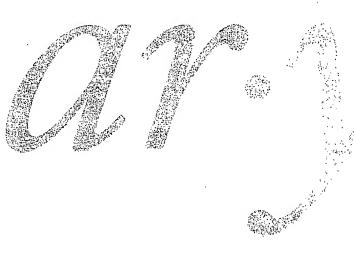
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RWW/MLT/srh

ATTACHMENT A

THE AMERICAN HERITAGE® COLLEGE DICTIONARY

THIRD EDITION





HOUGHTON MIFFLIN COMPANY

Boston • New York

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4

Abo

abroad

Ab·o or ab·o (ãb/ô) n., pl. -os. Offensive Slang. Used as a disparaging term for an Australian aborigine.

(a-bord', a-bord') adv. 1. On board a passenger vea · board hicle. 2. In or into a group, organization, or business. 3. Baseball. On base. — prep. On board of; on; in. [ME abord: a-, on; see n-2+bord, ship (< OE bord). a- a *bode (>-bōd') ν . A p.t. and p.part. of abide. — n. 1. A dwelling place; a home. 2. The act of abiding; a sojourn. [ME abod, home < abiden, to wait. See ABDE.]

ab. ohm (a-bom') n. The centimeter-gram-second electromagnetic unit of resistance, equal to one billionth of an ohm. a bol ish (2-bol ish) tr.v. ished. ish ing. ish es. 1. To do

away with; annul. 2. To destroy completely. [ME abolisshen < OFr. abolir, aboliss- < Lat. abolire. See al-2*.] — a bol'-ish-a ble adj. — a bol'ish-er n. — a bol'ish-ment n. ab-o-li-tion (äb'a-lish'an) n. 1. The act of doing away with</p>

or the state of being done away with; annulment. 2. Abolishment of slavery. [Lat. abolitio, abolition- < abolitus, p.part. of abolere, to abolish. See ABOLSH.] — ab'o li'tion-

ar'y (-līsh'>-nēr'ē) adj. ab·o·li·tion·ism (āb'>-līsh'>-nīz'əm) n. Advocacy of the ab-

olition of slavery. — ab'o·li'tion·ist n.

ab·o·ma·sum (āb'ō·mā'səm) n., pl. -sa (-sə). The fourth division of the stomach in ruminant animals, in which digestion

takes place. — ab'o·ma'sal (-sal) adj.
A-bomb (ā'bŏm') n. See atom bomb 1.
a·bom·l·na·ble (ɔ-bŏm'ɔ-nɔ-bəl) adj. 1. Unequivocally deabomin's in the (s-bom's in-s-ba) aut. 1. Onequivocarity detectable; loathsome. 2. Thoroughly unpleasant or disagreeable. [ME abhominable < OFr. < Lat. abōminābilis < abōminārī, to abhor. See ABOMUNTE.] — a bom'l·na·bly adv. abominable Snowman n. A hairy humanlike animal reportedly inhabiting the high Himalaya Mountains.
a·bom-i·nate (a-bōm's-nāt') tr.v.-nat·ed, -nat·lng, -nates.
To detect thoroughly abhor. [Ist abōmināti abōmināti.

To detest thoroughly; abhor. [Lat. abōminārī, abōminār-, to deprecate as a bad omen : ab-, away; see Ab-1 + ōmen,

omen.] — a bom/l·na'tor n. a bom·l·na·tion (a-bom'a-na'shan) n. 1. Abhorrence; dis-

gust. 2. A cause of abhorrence or disgust.

ab·o·ral (a-bôr'al, ab-or'-) adj. Located opposite to or away from the mouth. ab·o·rig·i·nal (ab'>-rij'>-nal) adj. 1. Having existed in a re-

gion from the beginning. 2. Of or relating to aborigines. — n. An aborigine. — ab'o*fig'!*nal*fy adv.

ab*o*rig*!*ne (āb'>-rīj'>nē) n. 1. A member of the indigenous or earliest known population of a region. 2. aborigines.

The flora and fauna native to a geographic area. [< Lat. aborigines, original inhabitants: ab-, from; see AB-1 + origine, ablative of origine heginning.

ablative of origo, beginning; see origin.]
a born Ing (a-bor'ning) adv. While coming into being or get-

ting under way,
a.bort (2-bôrt) v. a.bort.ed, a.bort.ing, a.borts. 1. To give birth before the embryo or fetus is capable of surviving on its own; miscarry. 2. To cease growth before full development or maturation. 3. To terminate an operation or procedure before completion. - tr. 1.a. To cause to terminate pregnancy prematurely, before the embryo or fetus is viable. b. To cause the expulsion of (a nonviable embryo or fetus). 2. To interfere with the development of; conclude prematurely: abort plans for a corporate takeover. 3. To terminate bety: abort plans for a corporate takeoff. 3. To terminate before completion: abort a takeoff. 4. To stop the progress of (a disease, for example). — n. 1. The act of terminating an operation or procedure before completion. 2. Comp. Sci. A procedure to terminate execution of a program when an unrecoverable error or malfunction occurs. [Lat. abortāre, freq. of abortīrī, abort-, to disappear, miscarry: ab-, away; see AB-1 +

oriri, to appear; see er-1*.]
a-bor-ti-fa-clent (a-bor'ta-fa'shant) adj. Causing abortion. - n. A substance or device used to induce abortion.

a · bor · tion (a-bor / shan) n. 1. Induced termination of pregnancy and expulsion of an embryo or fetus that is incapable of survival. 2. A miscarriage. 3. Cessation of normal growth, esp. of a body part, prior to full development or maturation.

4. An aborted organism. 5. Something malformed or incompletely developed; a monstrosity.

a · bor · tion · lst (a · bor / sha-nist) n. One who performs abor-

a bor tive (a-bor tiv) adj. 1. Failing to accomplish an intended objective; fruitless. 2. Biol. Partially or imperfectly developed. — a bor tive by adv. — a bor tive ness n.

ABO system n. A classification system for human blood that identifies four major blood types, A, B, AB, and O, based on the presence or absence of two antigens, A and B, on red blood cells.

a·bou·li·a (ɔ-boo'lē-ə, ɔ-byoo'-) n. Var. of abulia.

a bound (a-bound') intr.v. a bound ed, a bound ing, a bounds. 1. To be great in number or amount. 2. To be fully supplied or filled. See Syns at teem 1. [ME abounden < OFr.

supplied of filled. See syns at usell? [NL abounder < Ort. abonder < Lat. abundare, to overflow ab., away; see AB-1 + undare, to flow (< unda, wave; see wed-1*).]

a-bout (a-bout?) adv. 1. Approximately; nearly: about an hour. 2. Almost: The job is about done. 3. To a reversed position or direction. 4. In no particular direction: wandering

about. 5. All around; on every side: look about for help. 6. ln the area or vicinity; near: spoke to spectators standing about 7. In succession; one after another: Turn about is fair play.

- prep. 1. On all sides of; surrounding. 2. In the vicinity of around: explored the streams about the estate. 3. Almost the same as; close to; near. 4.a. In reference to; relating to; concerned with: a book about snakes. b. In the act or process of.
While you're about it, please clean your room. S. In the possession or innate character of: Keep your wits about 6.a. Ready or prepared to do something: The chorus is about to sing. b. Used with a negative to indicate strong intention - adj. 1. Moving here and there; astir: The patient is up and about. 2. Being in evidence or existence: Rumors are about concerning his resignation. [ME < OE onbutan: on, in; see on + butan, outside; see ud-*.]
a bout-face (a-bout fast) n. 1.a. The act of pivoting to face in

the opposite direction from the original. b. A military command to turn clockwise 180°. Z. A total change of attitude or

viewpoint. — a · bout'-face' v.
a · bove (a · būv') adv. 1. On high; overhead: the clouds above.
2. In heaven; heavenward. 3.a. Upstairs: in the dining room above. b. To a degree that is over zero: 15° above. 4. In or to a higher place. 5. In an earlier part of a given text. 6. In or to a higher rank or position: the ranks of major and above.

— prep. 1. Over or higher than. 2. Superior to in rank, position, or number; greater than: put principles above expediency. 3. Beyond the level or reach of: heard above the music. 4. In preference to. 5. Too honorable to bend to: above petry intrigue. 6. More than: above normal temperature. - n. Us age Problem. An earlier part of a given text. - adj. Appearing earlier in the same text: the above interpretation. (ME above: < OE abufan: a-, on; see A-2 + bufan, above; see upo.)

Usage Note: In general writing the use of above as an

adjective in referring to a preceding text (the above figures) was accepted by a majority of the Usage Panel in an earlier survey, but its use as a noun (read the above) was accepted by only a minority. These uses are most common in business and

only a minority. These uses are not considerations, legal writing.

above all adv. Over and above all other considerations.

a bove board (a-būv' bōrd', -bōrd') adv. & adj. Without deceit or trickery, straightforward in manner. [Originally a gambling term referring to the fact that a gambler could not engage in trickery when the hands were above the gaming table.]

bove-ground (2-buv ground') adj. 1. Situated on or above the surface of the ground. 2. Operating or existing within the establishment or in accordance with conventional standards: the aboveground press. - a bove ground adv.

abp. or Abp. abbr. Archbishop. abr. abbr. 1. Abridged. 2. Abridgment.

ab·ra·ca·dab·ra (ăb'ra-ka-dăb'ra) n. 1. A magical charm or incantation having the power to ward off disease or disaster. 2. Foolish or unintelligible talk. [LLat., magical formula.]

a·brad·ant (a-brad'nt) n. An abrasive. - adj. Abrasive a brade (a-brād') tr.v. a bradeed, a bradeing, a brades

1. To wear down or rub away by friction; crode. 2. To make weary through constant irritation; wear down spiritually. [Lat. abrādere, to scrape off: ab-, away; see AB-1 + rādere, to scrape; see rēd-*.]
A·bra·ham (ā'bra-hām'). In the Bible, the first patriarch and

progenitor of the Hebrew people.

ab-ra-sion (a-brā/zhən) n. 1. The process of wearing down or rubbing away by means of friction. 2.a. A scraped or wom area. b. A scraped area on the skin or on a mucous membrane, resulting from injury or irritation. [Med.Lat. abrāsiō, abrāsiōn- < Lat. abrāsus, p.part. of abrādere, to scrape off

ab·ra·sive (a-bra'siv, -ziv) adj. 1. Causing abrasion. 2. Harsh and rough in manner. -n. A substance that abrades. -8°

bra/sive·ly adv. — a·bra/sive·ness n.
ab·re·act (āb/re-ākt/) tr.v. -act·ed, -act·ing, -acts. To release (repressed emotions) by acting out, as in behavior or the imagination, the situation causing the conflict. [Transl. of Ger. abreagieren: ab-, away + reagieren, to react.] - ab're'

a-breast (2-brest) adv. 1. Side by side: ships docked two abreast. 2. Up to date with: keeping abreast of the news.
a-bridge (2-brij) tr.v. a-bridged, a-bridging, a-bridges. 1. To reduce the length of (a written text); condense. 2. To cut short; curtail. [ME abregen < OFr. abregier < LLat. abbre viāre, to shorten. Sec Asservate.) - a-bridg/er n.
a-bridg-ment also a-bridge-ment (a-brij/mont) n. 1. The ad

of abridging or the state of being abridged. Z. A written text

that has been abridged.

a-broach (a-broch!) adj. 1. Opened or positioned so that a liquid, such as wine, can be let out. 2. In a state of action; astir. [ME abroche: a-, on, in; see A-2 + broche, a pointed object, spigot; see BROACH.]

a broad (2-brod') adv. & adj. 1. Out of one's own country 2. In a foreign country or countries. 3. Away from one's home. 4. In circulation; at large. 5. Covering a large ares; widely. 6. Not on target; in error. - n. A foreign country of countries in which to live or travel: "Do you like abroad of hate it?" (John le Carré). [ME : brod, broad; see BROAD.

ab·ro·gate (ăb'ro-gāt') tr.v. -gi abolish, do away with, or annu ab-, away; see AB-1 + rogare, ga/tion n

a.brupt (a-brupt') adj. 1. Unexpe ly and unceremoniously curt; ubject after another with sudd dined. See Syns at steep 1, 5, Bo er than gradually; truncate. [Lat pere, to break off: ab-, away; st see reup-*.] — a brupt! by adv. a.brup.tion (a-brup/shan) n. An

ing away or off.
A-bruz-zi (ā-broot/sē, 2-broot/-) (ā mô-lē ze). A region of central

atic Sea.
abs abbr. Absolute temperature. abs. abbr. 1. Absence; absent. 2. stract.

Ab·sa·ro·ka Range (ab-sar/ >-k Mts. in NW WY and S MT, risi Ab·sa·ro·ke (ăb-săr/o-ko) n.,

ab scess (ab'ses') n. A localized the body, surrounded by an infla -scess ing. -scess es. To form: p.part. of abscëdere, to go aw: cëdere, to go; see ked-*.]

bi-scise (36.512') \(\nu\$-scised, -scised, -scised, scised, fremove. — intr. To shed by absciss: \(ab_{-1} = ab_{-1} = ab_{-1}

along a line perpendicular to th coordinate system. [NLat. (linea)

abscissus, p.part. of abscindere, ab-scis-sion (ab-sizh-an) n. 1. The shedding of leaves, flowers mation of the abscission zone. abscission zone n. The region at as a leaf, where the formation

separation of that part from the ab-scond (ab-skond) intr.v. -scc To leave quickly and secretly ar or prosecution. [Lat. abscondere Ab-1 + condere, to put; see dh ab-sence (ab/sons) n. 1. The stat during which one is away. 3. L ab sent (ab sent) adj. 1. Not pre 2. Not existent; lacking: Morali

feeling inattentiveness: an abs sent ed. sent ing. sents. To absented themselves from the di < OFr. < Lat. absens, absent-, : abs-, ab-, away; see AB-1 sent-ly adv.

ab·sen·tee (ab'san-te/) n. One t relating to one that is absent. I landlords. See Usage Note at - absentee ballot n. A ballot mark

a voter away from the place wl ab·sen·tee·ism (ăb'sən-tê/īz'ə appear, esp. for work or other occurrence of habitual absence ab-sent-mind-ed (ab'sant-min'

heedless of present circumstant - ab'sent-mind/ed·ly adv. absent without leave adj. Absen

post or duties without official ; ab-sinthe also ab-sinth (ab'sint European herb (Artemisia absi curopean herb (Artemisia absi having a bitter anise or licoric content, prepared from absinthe wood < OFr. < Lat. absinthiu. ab-so-lute (āb/sə-loōi', āb/sə-lö or nature; complete. 2. Not m 3.a. Not limited by restrictions absolute trust. b. Unqualified in solute (absolute trust. b. Unqualified in solute trust. b. Unqualified in solute (absolute trust. b. Unqualified in solute trust.)

solute silence. See Usage Note at constitutional or other provision be doubted or questioned; posit a. Of, relating to, or being a v that is isolated syntactically from relating to, or being a transitive but not stated. c. Of, relating t pronoun that stands alone whe Plied but not stated. 7. Phys. a. units of measurement derived length, mass, and time. b. Rela
n. 1. Something that is ab

A B R A C A D A B R A
A B R A C A D A B R
A B R A C A D A B
A B R A C A D A
A B R A C A D
A B R A C A
A B R A C
A B R A C
A B R A C

abracadabra